

**In the Supreme Court of the State of
Montana**

No. DA 17-0492

KENDRA ESPINOZA, JERI ELLEN ANDERSON
and JAIME SCHAEFER,

Plaintiffs-Appellees,

v.

MONTANA DEPARTMENT OF REVENUE,
and MIKE KADAS, in his official capacity
as DIRECTOR of the MONTANA DEPARTMENT
OF REVENUE,

Defendants-Appellants.

**Brief of ACE Scholarships
as Amicus Curiae Supporting Plaintiffs-Appellees**

Anita Y. Milanovich, #12176
THE BOPP LAW FIRM, PC
1627 West Main Street, Suite 294
Bozeman, MT 59715
Phone: (406) 589-6856
Email: aymilanovich@bopplaw.com
*Counsel for Amicus Alliance for
Choice in Education (ACE)
Scholarships*

Counsel of Record:

Brendan R. Beatty
Daniel J. Whyte
Nicholas James Gochis
P.O. Box 7701
Helena, MT 59624
Ph.: (406) 444-3340
(406) 444-1602
(406) 444-3339
Email: dwhyte@mt.gov
bbeatty@mt.gov
ngochis@mt.gov

Counsel for Defendant-Appellant

Richard Komer
Erica Smith
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite
900
Arlington, VA 22203
Ph.: (703) 682-9320
Email: rkomer@ij.org
esmith@ij.org

William W. Mercer
HOLLAND & HART
401 North 31st Street Suite
1500PO Box 639
Billings, MT 59103-0639
Ph.: (406) 896-4607
Email:
wwmercerc@hollandhart.com

Counsel for Plaintiff-Appellees

Table of Contents

	Page
INTRODUCTION	1
ARGUMENT	4
I. Providing more families the ability to choose the best schools for their children creates widespread and long-lasting public benefits.	4
A. ACE scholarships have a track record of producing positive results for students and families.....	5
B. Scholarship programs positively impact others in the recipients’ families, including other generations.....	9
C. The success of ACE scholars provides widespread benefits not just to the families and students involved, but to society as a whole.....	12
II. The Montana Department of Revenue’s categorical exclusion of religious education providers from a generally available tax credit program violates the U.S. Constitution.	16
A. Categorical exclusion of religious actors, even in the education field, violates the U.S. Constitution.	18

B. Government programs of general public benefit need not exclude religious actors to comply with the Establishment Clause.	20
CONCLUSION.....	23

Table of Authorities

	Page
Cases	
<i>Everson v. Bd. of Ed. of Ewing</i> , 330 U.S. 1 (1947)	22
<i>Locke v. Davey</i> , 540 U.S. 712 (2004)	18, 20, 21, 23
<i>Trinity Lutheran Church of Columbia v. Pauley</i> , 137 S. Ct. 2012 (June 26, 2017)	passim
<i>Zelman v. Simmons-Harris</i> , 536 U.S. 639 (2002)	23
Other Authorities	
“Unemployment rates and earnings by educational attainment, 2016,” United States Department of Labor, Bureau of Labor Statistics	14
Andrew Sum, Ishwar Khatiwada, Joseph McLaughlin, Sheila Palma, “The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers,” Center for Labor Market Studies, Northeastern University, (Oct 2009)	14
Angela K. Dills and Rey Hernandez-Julian, “More Choice, Less Crime,” <i>Education Finance and Policy</i> 6:2, (Spring 2011)	17
Anna J. Egalite, “How Family Background Influences Student Achievement,” <i>Education Next</i> 16:2, (Spring 2016)	11
Bruce Sacerdote, “How Large are the Effects from Changes in Family Environment? A Study of Korean American Adoptees,” <i>The Quarterly Journal of Economics</i> 122:1, (Feb 2007)	11
David J. Deming, “Better Schools, Less Crime?” <i>The Quarterly Journal of Economics</i> 126:1	17

Didi Fahey, “Alliance for Choice in Education Montana: 2015-16 Evaluation Report,” Quantitative Research Evaluation and Measurement, (Jan. 15, 2017).....	8
Didi Fahey, “Alliance for Choice in Education: 2015-16 Colorado Evaluation Report,” Quantitative Research Evaluation and Measurement, (Feb. 7, 2017)	7
Didi Fahey, “Alliance for Choice in Education: Social Mobility,” (Oct. 2017)	12
Didi Fahey, “Alliance for Choice in Education: Value of a High School Diploma,” Quantitative Research Evaluation and Measurement, (June 2017).....	7
Eric. F. Dubow, Paul Boxer, and L. Rowell Huesmann, “Long-term Effects of Parents’ Education on Children’s Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and Teenage Aspiration,” Merril-Palmer Quarterly 55:3, (July 2009)	11
Greg Forster, “A Win-Win Solution: The Empirical Evidence for School Choice,” Friedman Foundation for Educational Choice, (May 2016).....	9
Jonathan N. Mills and Patrick J. Wolf, “How Has the Louisiana Scholarship Program Affected Students? A Comprehensive Summary of Effects after Three Years,” Education Research Alliance for New Orleans, (June 26, 2017).....	9
Joshua M. Cowen, David J. Fleming, John F. Witte, Patrick J. Wolf, and Brian Kisida, “School Vouchers and Student Attainment: Evidence from a State-Mandated Study of Milwaukee's Parental Choice Program,” Policy Studies Journal 41:1, (Feb. 2013).....	16
Matthew M. Chingos and Daniel Kuehne, “The Effects of Statewide Private School Choice on College Enrollment and Graduation: Evidence from the Florida Tax Credit Scholarship Program,” The Urban Institute, (Sept. 2017)	10

Matthew M. Chingos and Paul E. Peterson, “The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City,” Brown Center on Education Policy at Brookings and Harvard Kennedy School Program on Education Policy and Governance, (August 2012) 15

INTRODUCTION

Amicus Curiae Alliance for Choice in Education Scholarships (ACE) is a nonprofit organization dedicated to the proposition that every child deserves a great education. Since its founding in 2000, ACE has sought to achieve that goal by providing K-12 nonpublic school scholarships to help as many low-income students as possible attend the schools of their choice. To date, ACE has awarded 28,000 K-12 nonpublic school scholarships worth \$65 million. The organization currently provides nearly 5,000 K-12 private school scholarships across six states, including Montana. The experience of ACE scholars confirms that improving education options for students and families is a major step towards achieving a great education.

As the largest dedicated provider of education scholarships in Montana, ACE knows the power of scholarships in the lives of students. There are many quantifiable and proven benefits to providing scholarships to K-12 students, such as those students who would be eligible for scholarships under Montana's scholarship tax credit program. The bottom line of ACE's experience is that the public benefits of K-12 scholarship programs are broad, deep, and persistent. Not only individuals, but families, generations, and ultimately entire communities are

positively impacted when students have more educational options.

In ACE's experience, many, though not all, of the schools that provide these alternative options are associated with religious institutions. Excluding such schools from increased education options would hamper the goal of providing the greatest possible educational opportunity to the greatest number of students. More importantly for this Court's purposes, the U.S. Supreme Court has now made clear that when a government provides a public benefit, it cannot exclude some citizens or institutions from the program merely because they are religious. ACE has an interest in this case because it involves a scholarship program that, much like ACE funded scholarships, is intended to provide expanded educational opportunities and lifelong benefits for students who may otherwise have less opportunity to pursue an educational setting better fitted to their individualized needs.

Unfortunately, ACE's resources are far too limited to help more than a small fraction of the students and families who might benefit from increased educational options, so it welcomes other efforts to do so. Because this case could harm one such effort in Montana, it undermines the very purpose behind ACE, and thus ACE has a fundamental interest in supporting a program that shares its core mission.

To ensure that it uses the resources it does have as effectively as possible, ACE also keeps careful track of the empirical results of various forms of educational opportunity, both for its own scholars and more generally. Because that information may be of use to the Court, ACE also has an interest in participating as amicus curiae to provide beneficial information to the Court.

In particular, ACE has an interest in this case for at least three reasons. First, the enactment of school choice programs like Montana's scholarship tax credit program expands access to high-quality private educational options for disadvantaged families.¹ Second, ACE's extensive work and investment in third-party evaluation of its work in the field of nonpublic school choice have provided the organization with a unique perspective on the positive impacts of private school access both on individual students and on society as a whole. Third, as school choice programs continue to expand across the United States, ACE has a substantial interest in protecting the rights of its 461 partner

¹ ACE currently provides scholarships to nearly 750 Montana students through ACE Scholarships Montana, LLC, a subsidiary of ACE. These scholarships fall outside Montana's relatively new tax credit system that is subject to challenge in this case. While ACE Scholarships does not currently participate in the Montana tax credit program, it hopes to participate in the scholarships tax credit program at a later date.

schools—including its 402 faith-based partner schools covering a wide variety of religious beliefs—to participate in otherwise available public benefit programs.

ACE brings a valuable perspective to the Court to address the impact and public benefit of scholarships for Montana students.

ARGUMENT

Students have diverse educational needs that are best served by an educational system that provides diverse educational options. Even the finest public school systems cannot effectively serve every student or meet every need. Allowing families to choose nonpublic schools can provide a broader array of options that are not otherwise available for many students and families. This has been borne out by ACE’s experience, and is confirmed in studies around the country.

I. Providing more families the ability to choose the best schools for their children creates widespread and long-lasting public benefits.

The Montana Legislature enacted a tax credit program that would make it easier for students to receive scholarships from private “Student Scholarship Organizations” which provide scholarships to any “qualified education provider.” With additional private donations being made to the scholarship granting organizations in Montana, this tax credit system has

the potential to improve many families' ability to choose different education options. The Montana Department of Revenue, however, adopted a broad, exclusionary rule prohibiting any religiously affiliated school from being eligible to receive the tax-credit enhanced scholarships. This rule was rightly overturned by the court below. Allowing tax-credit-incentivized donations to flow to a wide variety of schools, including faith-based schools, would greatly improve the public benefit of increased educational choice for many students and families.

A. ACE Scholarships Have a Track Record of Producing Positive Results for Students and Families.

ACE was founded in Colorado and more recently has expanded its programs into other states, including Montana. Because of the longstanding nature of the program in Colorado, ACE has been able to engage in detailed evaluation of its results in that state. The average Colorado ACE student enters his or her school at levels below proficient in both math and reading. By the middle of their second year in the program, these students perform at proficient levels in at least one subject, and by their fourth year in a private school, these students are proficient in both subjects. Indeed, low-income ACE students in the aggregate outperform Colorado public school students of all income levels in

academic proficiency.² At the same time, income-related achievement gaps remain large and intractable in Colorado public schools overall. Colorado ACE scholars also outperform their low-income peers in public schools on college entrance exams in all subjects. Their overall scores are only slightly lower than scores for non-low-income students statewide. *Id.*

In 2016, Colorado ACE students graduated from high school at a rate of 93 percent. By comparison, only 67.8 percent of economically disadvantaged students in Colorado graduated high school within four years. Likewise, ACE students are nearly twice as likely to go to college as other low-income Colorado students. In 2016, 78.3 percent of ACE students matriculated to college. By contrast, just 32.5 percent of low-income Colorado students matriculated to college in 2015.³

² Didi Fahey, “Alliance for Choice in Education: 2015–16 Colorado Evaluation Report,” Quantitative Research Evaluation and Measurement, (Feb. 7, 2017), *available at* <https://www.acescholarships.org/wp-content/uploads/2018/01/ACE-2015-16-Colorado-Report-Condensed.pdf>.

³ See Didi Fahey, “Alliance for Choice in Education: Value of a High School Diploma,” Quantitative Research Evaluation and Measurement, (June 2017), at 16, *available at* <https://www.acescholarships.org/wp-content/uploads/2017/10/2017-Value-of-a-Diploma1.pdf>

Though ACE’s evaluative data is more limited in Montana—the program was launched in 2012, and only two years of data are currently available—the results largely mirror the patterns seen in Colorado. In 2015–16, the median household income of ACE families in Montana was \$28,881, which was considerably lower than Montana’s overall median household income of \$61,271.⁴ Even so, Montana ACE scholars in grades 3–8 had higher levels of proficiency in mathematics than both low-income public school students and public school students overall. *Id.* ACE Montana students also outperformed their public school peers on college entrance assessment in both 2015 and 2016. *Id.* Perhaps most importantly, the vast majority (79.2 percent and 80.4 percent, respectively) of ACE parents in Montana are satisfied that their chosen schools offer better academics and a safer environment.

Not all school choice programs are as effective as ACE, but studies in general confirm these benefits. According to a 2016 literature review of “gold-standard” random-control-trial studies on nonpublic school choice in the United States, 14 of 18 studies

⁴ Didi Fahey, “Alliance for Choice in Education Montana: 2015–16 Evaluation Report,” Quantitative Research Evaluation and Measurement, (Jan. 15, 2017), *available at* <https://ace-scholarships-upperhouse.netdna-ssl.com/wp-content/uploads/2017/03/Montana-ACE-Jan-2017.pdf>.

found that choice programs produced at least small, positive academic impacts for participating students. Of these 14 studies, six find that the programs positively impact all students while the remaining eight find that they impact some subgroups of students and produce no impacts on others. Only two of the total number of studies—both on Louisiana’s voucher program—found negative impacts.⁵ The remaining two of the total of 18 studies found no visible impact on participating students.⁶ Several more recent studies have supported the notion that educational choice programs benefit students. For example, a recent study on the

⁵ One recent study reevaluates the negative impacts previously reported for students participating in the Louisiana Scholarship Program. Despite the negative results seen in previous studies on the program, a new examination of the Louisiana Scholarship Program found that “By the third year, the performance of LSP scholarship users was statistically similar to their counterparts in both ELA and math.” Jonathan N. Mills and Patrick J. Wolf, “How Has the Louisiana Scholarship Program Affected Students? A Comprehensive Summary of Effects after Three Years,” Education Research Alliance for New Orleans, (June 26, 2017), at 4,

https://educationresearchalliancencola.org/files/publications/ERA1706-Policy-Brief-Louisiana-Scholarship-Program_170804_161627.pdf.

⁶ Greg Forster, “A Win-Win Solution: The Empirical Evidence for School Choice,” Friedman Foundation for Educational Choice, (May 2016), <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>.

Florida Tax Credit program, the largest of its kind in the nation with approximately 100,000 participating students, found that low-income students participating in FTC are substantially more likely to enroll in a public college in Florida⁷.

As the largest dedicated provider of primary education scholarships in Montana, ACE knows the power of scholarships in the lives of students. There are many quantifiable and proven benefits to providing scholarships to K-12 students like those who would be eligible for scholarships under Montana's scholarship tax credit program.

B. Scholarship Programs Positively Impact Entire Families.

The benefits of a scholarship ripple through generations. Parental education levels are typically recognized as “the single strongest correlate of children's success in school, the number of years they attend school, and their success later in life.”⁸

⁷ Matthew M. Chingos and Daniel Kuehne, “The Effects of Statewide Private School Choice on College Enrollment and Graduation: Evidence from the Florida Tax Credit Scholarship Program,” The Urban Institute, (Sept. 2017), https://www.urban.org/research/publication/effects-statewide-private-school-choice-college-enrollment-and-graduation/view/full_report

⁸ Anna J. Egalite, “How Family Background Influences Student Achievement,” *Education Next* 16:2, (Spring 2016),

Parental education level has a significant impact on life outcomes for children, particularly when it comes to inculcating educational aspirations and driving educational attainment during the critical adolescent phase.⁹ Scholarship programs such as ACE's, by providing greater opportunity to reach higher levels of educational attainment for a broader range of students, create these ripple effects.

Although the exact size of these impacts is difficult to quantify, it is clear that ACE's work has positive ripple effects that extend far beyond the students the organization serves directly—effects that could drive transformative societal change if more families were able to participate. Increasing a particular student's performance with a scholarship today pays returns to

available at <http://educationnext.org/how-family-background-influences-student-achievement/>.

⁹ Eric. F. Dubow, Paul Boxer, and L. Rowell Huesmann, "Long-term Effects of Parents' Education on Children's Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and Teenage Aspiration," *Merrill-Palmer Quarterly* 55:3, (July 2009), 224–249, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2853053/#R26>; and Bruce Sacerdote, "How Large are the Effects from Changes in Family Environment? A Study of Korean American Adoptees," *The Quarterly Journal of Economics* 122:1, (Feb 2007), 119–157, <https://academic.oup.com/qje/article-abstract/122/1/119/1924717/How-Large-are-the-Effects-from-Changes-in-Family?redirectedFrom=fulltext>.

society in future generations as well. Each student provided a scholarship today can increase not only his or her own prospects, but those of many future students.

And not only do future generations benefit, the effect works in reverse as well: not just the children, but even the *parents* of scholarship recipients attain greater educational success: “On average, parents [of ACE scholarship recipients] advance from having no post-secondary credentials (including certificates) to having at least one.”¹⁰

Similarly, between 2011 and 2015, income levels for both low- and middle-income families decreased slightly while high-income families’ incomes increased. Conversely, ACE’s low-income families have seen steady increases in their per capita incomes the longer their children stay in the ACE program. Between year one and year two in the ACE program, ACE families experienced an average earnings increase of 12.4 percent. *See id.* at 3, 8; 19–20.

Though more research is needed to establish a causal link, it is theorized that school choice allows low-income ACE families to

¹⁰ Didi Fahey, “Alliance for Choice in Education: Social Mobility,” (Oct. 2017), at 31, *available at* <https://www.acescholarships.org/wp-content/uploads/2018/01/Social-Mobility-Report-FINAL-10.18.17-Draft.pdf>.

build the economic, human, social, and cultural capital needed to improve their situations by allowing them to engage in their children's education, create relationships outside their normal peer groups, and observe the progress of their own children.

C. The Success of ACE Scholars Provides Widespread Benefits Not Just to the Families and Students Involved, but to Society as a Whole

It is well documented that incomes and employment rates rise with higher levels of educational attainment. Americans without a high school diploma earn \$188 less per week than Americans with a high school diploma, and are more likely to be unemployed. Americans with a bachelor's degree can expect to weekly earn more than twice what an American without a high school diploma earns. Additionally, unemployment rates for Americans with a bachelor's degree (2.7 percent) are significantly lower than for Americans without a high school diploma (7.4 percent).¹¹

¹¹ "Unemployment rates and earnings by educational attainment, 2016," United States Department of Labor, Bureau of Labor Statistics, *available at* https://www.bls.gov/emp/ep_chart_001.htm.

The stakes are high. The estimated cost of a single high school dropout to society is \$292,000.¹² This figure includes lower tax revenues as a result of lower wages, higher costs associated with government assistance, and a higher risk of incarceration and its associate costs. ACE’s own independent evaluation of U.S. Census Bureau and U.S. Bureau of Labor Statistics data estimates that a high school dropout will also experience an average loss of wages equal to \$888,460 over the course of 30 years after controlling for the number of students who return to school to earn a GED or certificate. Combined, these figures indicate that a single high school dropout costs to society \$1,180,456.¹³

In 2016, an estimated 14,857 of the 99,861 18–24 year-olds residing in Montana do not have a high school diploma.¹⁴ Based on the preceding estimates, these individuals will cost society \$4,338,244,000 over the course of their lives in addition to

¹² Andrew Sum, Ishwar Khatiwada, Joseph McLaughlin, Sheila Palma, “The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers,” Center for Labor Market Studies, Northeastern University, (Oct 2009), at 15, *available at* https://repository.library.northeastern.edu/downloads/neu:376324?datastream_id=content.

¹³ Didi Fahey, *supra* note 3, at 15–16.

¹⁴ *See id.* at 16, n.13.

incurring a cost of \$13,199,850,220 to themselves in lost earnings.¹⁵

In addition, private school choice can play an important role in increasing college enrollment and matriculation rates. One 2012 study examines the impacts of a private school scholarship program in New York City on college enrollment patterns and found that it had a large and statistically significant positive impact on college enrollment by African American students.¹⁶ Likewise, a 2013 study on vouchers in Milwaukee found that “exposure to voucher schools was related to graduation and, in particular, to enrollment and persistence in a 4-year college. These differences are apparent despite controls for student neighborhoods, demographics, early-career test scores and—for a subsample of survey respondents—controls for parental education, income, religious behavior, and marital status.”¹⁷

¹⁵ *See id.* at 17.

¹⁶ *See* Matthew M. Chingos and Paul E. Peterson, “The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City,” Brown Center on Education Policy at Brookings and Harvard Kennedy School Program on Education Policy and Governance, (August 2012), https://www.brookings.edu/wp-content/uploads/2016/06/Impacts_of_School_Vouchers_FINAL.pdf.

¹⁷ Joshua M. Cowen, David J. Fleming, John F. Witte, Patrick J. Wolf, and Brian Kisida, “School Vouchers and Student

Finally, there is some emerging evidence that access to school choice programs may help reduce criminal activity, thereby reducing costs to society. A 2016 examination of Milwaukee’s voucher program finds preliminary evidence that “merely being exposed to private schooling for a short time through a voucher program may not have a significant impact on criminal activity, though persistently attending a private school through a voucher program can decrease subsequent criminal activity, especially for males.”¹⁸ Though not conclusive, the study’s findings closely mirror similar findings in public school choice programs elsewhere in the nation.¹⁹

Attainment: Evidence from a State-Mandated Study of Milwaukee's Parental Choice Program,” *Policy Studies Journal* 41:1, (Feb. 2013), at 147,
<http://onlinelibrary.wiley.com/doi/10.1111/psj.12006/full>.

¹⁸ Corey DeAngelis and Patrick J. Wolf, “The School Choice Voucher: A ‘Get Out of Jail’ Card?” (March 8, 2016) (Working paper, on file with the University of Arkansas Department of Education Reform), at 1,
<http://www.uaedreform.org/downloads/2016/03/the-school-choice-voucher-a-get-out-of-jail-card.pdf>.

¹⁹ See David J. Deming, “Better Schools, Less Crime?” *The Quarterly Journal of Economics* 126:1, 2063–2115,
https://scholar.harvard.edu/files/ddeming/files/deming_bslc_qje.pdf; and Angela K. Dills and Rey Hernandez-Julian, “More Choice, Less Crime,” *Education Finance and Policy* 6:2, (Spring 2011),
http://www.mitpressjournals.org/doi/10.1162/EDFP_a_00033.

No one, including Appellants, seriously contests the proposition that improved educational outcomes provide significant public benefits. Yet some do not acknowledge the role private school choice can play in producing those improved outcomes, particularly for students who find their needs not met in traditional public schools. ACE’s third-party evaluation and the wider body of empirical research on the topic shows that individuals, families, school districts, and society in general benefit when more parents are provided with the ability to choose the best schools for their children. The challenged program here seeks to do the same thing. Based on these studies, the success of ACE scholars through private school choice, as with other education opportunity expansions generates a substantial public benefit.

II. The Montana Department of Revenue’s Categorical Exclusion of Religious Education Providers from a Generally Available Tax Credit Program Violates the U.S. Constitution.

This case bears a striking resemblance to *Trinity Lutheran Church of Columbia v. Pauley*, 137 S. Ct. 2012 (June 26, 2017). There, as here, the State attempted to categorically exclude a religious institution from a generally available benefit—purely on the basis of religious identity. There, as here, the State defended this exclusion by invoking the “play in the joints”

between the Free Exercise and Establishment Clauses from *Locke v. Davey*, 540 U.S. 712 (2004). A careful reading of precedent compels the conclusion that Montana, like Missouri, cannot use a “no aid” provision in its Constitution as justification for disqualifying religious education providers from participating in the SB 410 tax credit program.

The federal constitutional issues, however, can and should be avoided by following the common-sense interpretation of the lower court whereby a tax credit system does not implicate Montana’s two constitutional provisions limiting appropriations or payments to religious institutions. Even if the State has an interest in controlling the appropriation of government funds (including payments) to religious institutions, those concerns are greatly diminished when it comes to the tax credit program at issue here. When it comes to limiting which schools can qualify for scholarships from a scholarship-granting organization that accepts private donations, there are miniscule risks that the State will be entangled with religion, even if donors receive a tax benefit. If this Court reaches the constitutional issues, it must find that Montana cannot adopt a rule preventing education providers from receiving privately administered student scholarships simply because those education providers are religious.

A. Categorical Exclusion of Religious Actors, Even in the Education Field, Violates the U.S. Constitution.

The U.S. Supreme Court has now made clear that a program that provides broad public benefits such as those described above cannot exclude institutions simply because they are religious. The Appellants and supporting amici have relied heavily on footnote 3 in the *Trinity Lutheran* majority opinion, *but see, Trinity Lutheran*, 137 S. Ct. at 2025–26 (Gorsuch, J., concurring) (questioning the usefulness of footnote 3 for lower courts). However it is the clarification that comes from Justice Breyer’s concurrence that best helps resolve this case.

As explained in Part I, the Respondents’ scholarship program allows students to use scholarships to help pay tuition at partnering private schools. This choice was designed to provide public benefits in the form of increased educational opportunity for the scholarship students, and competition and decreased need for resources to educate those qualifying students at public schools. Allowing families to partner with private schools would provide broad public benefits.

Under the reasoning of the *Trinity Lutheran* majority, these public benefits make the Respondent’s scholarship program much more like the playground resurfacing grant program in

Trinity Lutheran than the narrow restriction on funding for clerical studies in *Locke v. Davey*, 540 U.S. 712 (2004). The Supreme Court rejected Missouri’s reliance on *Locke* to justify excluding churches from its grant program and in the process highlighted key distinguishing factors:

- (1) In *Locke* the scholarships “were paid out of the State’s general fund,” at 2023.
- (2) In *Locke* “scholarship recipients were free to use the money in accredited religious and non-religious schools alike.” *Id.*
- (3) In *Locke*, the student “was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed *to do*—use the funds to prepare for the ministry.” *Id.*
- (4) “*Locke* took account of Washington’s antiestablishment interest only after determining, as noted, that the scholarship program did not ‘require students to choose between their religious beliefs and receiving a government benefit’.” *Id.* (quoting *Locke*).
- (5) In *Locke*, the “scholarship program went ‘a long way toward including religion in its benefits’ ... [students] were free to use their scholarships at ‘pervasively religious schools’.” *Id.* (quoting *Locke*).

Every one of these distinguishing factors favor the application of *Trinity Lutheran* in this case, not *Locke*. Rule 1 by its plain terms simply excludes all schools which are religious from being eligible to participate in the tax credit program just as *Trinity Lutheran*

was excluded, purely because of its religious identity, from participating in the scrap tire recycling program. And *Locke* itself relied on the inclusion of religious schools as valid options as material while Montana's policy is entirely exclusionary towards religious schools.

B. Government Programs of General Public Benefit Need Not Exclude Religious Actors to Comply with the Establishment Clause.

In *Trinity Lutheran*, Justice Breyer noted how by applying the Missouri Constitution's broad prohibition on funding going to a church, "the State would cut Trinity Lutheran off from participation in a general program designed to secure or to improve the health and safety of children." *Id.* at 2027 (Breyer, J., concurring). A government program with "a limited number of projects" thus should be treated like cutting off churches from "general government services as ordinary police and fire protection," *Everson v. Bd. of Education of Ewing*, 330 U.S. 1, 17–18 (1947), absent some significant showing of state interest that was absent in *Trinity Lutheran*. *Id.*

As in *Trinity Lutheran*, the State argues it must exclude religious institutions from receiving scholarship funds where the scholarship granting organization receives private donations that are eligible for a tax credit because the state needs to prohibit the

establishment of religion as with direct taxpayer funding of churches. This, again, elides the substantial distinction between government appropriations of taxpayer funds and private donations for which the donors receive a tax credit. It also ignores the predominate purpose behind supporting student scholarships to expand educational choice: benefiting students. The Montana legislature structured this program to help student recipients of the scholarships, not as a means of supporting or sustaining certain non-public schools.

The program's primary effect was not to advance religion, as it was designed to benefit the student, not the institution. The same purpose analysis shows that the challenged program here primarily benefits students (a public benefit) and therefore religious schools need not be excluded on account of being religious. Indeed, the scholarship program is a program of "true private choice" where government funds reach religious schools only as a result of the "genuine and independent private choice," providing a clearer public benefit than aid programs where funds go directly to religious schools, often still resulting in a constitutionally permissible public benefit. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002).

With the clarification and distinction between *Trinity Lutheran* and *Locke* in mind, this Court can hew to the holding of

Trinity Lutheran without needing to strike down portions of the Montana Constitution as unconstitutional discrimination against religion. Here, all that is necessary is for the lower court ruling to be affirmed, finding Rule 1 to exceed the authority of the Department of Revenue. If a government program largely benefits the public and the intended citizens (*i.e.*, students and their families), and that same program only incidentally benefits religious institutions, then the case aligns with *Trinity Lutheran* and the State may not constitutionally exclude religious institutions from participation. That is the situation here, as shown above and by the Plaintiffs. These types of government benefit programs extend beyond the widely dispersed services such as police and fire protection to competitive grant programs, and here, scholarship programs.

Creative uses of public funds to improve educational opportunities for Montana students should be encouraged. The U.S. Supreme Court's decision in *Trinity Lutheran* provides guidance for how the public benefit-rich nature of the Respondent's program can be constitutionally permitted under the Montana Constitution.

CONCLUSION

Amicus Curiae ACE respectfully request that this Court affirm the opinion of the Trial Court.

Dated: January 19, 2018

Respectfully Submitted,

s/Anita Y. Milanovich
Anita Y. Milanovich, #12176
THE BOPP LAW FIRM, PC
1627 West Main Street, Suite 294
Bozeman, MT 59715
Phone: (406) 589-6856
Email: aymilanovich@bopplaw.com
*Attorney for Proposed Amicus
Alliance for Choice in
Education (ACE) Scholarships*

Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word does not exceed 5,000 words because it is 4,928 words, excluding the Table of Contents, Table of Authorities, Certificate of Service and Certificate of Compliance.

s/Anita Y. Milanovich
Anita Y. Milanovich

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I certify that the foregoing *Brief of ACE Scholarships as Amicus Curiae Supporting Plaintiffs-Appellees* was served on all parties on January 19, 2018, as follows:

Brendan R. Beatty
Daniel J. Whyte
Nicholas James Gochis
P.O. Box 7701
Helena, MT 59624
Ph.: (406) 444-3340
(406) 444-1602
(406) 444-3339
Email: dwhyte@mt.gov
bbeatty@mt.gov
ngochis@mt.gov

Counsel for Defendant-Appellant Montana Department of Revenue
Service Method: eService

Richard Komer
Erica Smith
Institute for Justice
901 North Glebe Road, Ste 900
Arlington, VA 22203
Ph.: (703) 682-9320
Email: rkomer@ij.org
esmith@ij.org
Counsel for Plaintiffs-Appellees
Service Method: U.S. First Class Mail

William W. Mercer
HOLLAND & HART
401 North 31st Street
Suite 1500
PO Box 639
Billings, MT 59103-0639
Ph.: (406) 896-4607
Email: wwmerc@hollandhart.com
Counsel for Plaintiffs-Appellees
Service Method: eService

s/Anita Y. Milanovich
Anita Y. Milanovich